

PUBLIC MATTER

FILED *dg*

JUN 28 2016

STATE BAR COURT OF CALIFORNIA STATE BAR COURT CLERK'S OFFICE
SAN FRANCISCO
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of) Case Nos.: 14-O-06116-PEM
) (14-O-06441)
WALTER LEE DAVIS,)
)
Member No. 98513,) DECISION AND ORDER OF
) INVOLUNTARY INACTIVE
) ENROLLMENT
A Member of the State Bar.)
_____)

Respondent Walter Lee Davis (respondent) was charged with 13 counts of violations of the Rules of Professional Conduct and the Business and Professions Code.¹ He failed to appear at the trial of this case and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.²

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated within 45 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.³

¹ Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

² Unless otherwise indicated, all references to rules are to this source.

³ If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)



In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in California on January 12, 1981, and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 31, 2015, the State Bar properly filed and served a notice of disciplinary charges on respondent. The NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. Respondent filed a response to the NDC on September 25, 2015.

At a status conference on November 2, 2015, the trial was set to start on January 6, 2016. The November 2, 2015 order setting the trial date was served on respondent at his membership records address by first-class mail, postage paid. (Rule 5.81(A).)

On January 6, 2016, the State Bar appeared for trial but respondent did not.⁴

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed January 6, 2016. The order notified respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

⁴ Senior Trial Counsel Sherrie B. McLetchie declared that before January 6, 2016, on more than one occasion, respondent had told her that he did not intend to appear at trial.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 45 days after order entering default is served to file motion to set aside default].)

On March 15, 2016, the State Bar properly filed and served the petition for disbarment on respondent at his official membership records address. As required by rule 5.85(A), the State Bar reported in the petition that: (1) since his default was entered, respondent contacted the State Bar on March 4, 2016, in response to the State Bar's transmittal to him of a proposed resignation stipulation in case No. 16-Q-10062.⁵ Thereafter, they exchanged several e-mails. But he did not contact the State Bar about setting aside his default; (2) there are five other disciplinary matters pending against respondent; (3) respondent has no record of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct.

Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on April 12, 2016.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

1. Case No. 14-O-06441 (Cook Matter)

Count 1 – Respondent willfully violated section 6106 (moral turpitude and dishonesty) by signing a release claim on behalf of his client, Eric Cook, on August 4, 2014, without the client's authorization in a personal injury matter.

⁵ The court takes judicial notice that on January 4, 2016, respondent filed a resignation with charges pending and that on May 6, 2016, the Review Department recommended to the Supreme Court to reject respondent's resignation. (State Bar Court case No. 16-Q-10062.)

Count 2 – Respondent willfully violated rule 4-100(B)(1) of the Rules of Professional Conduct (failure to promptly notify a client of receipt of client funds) by failing to promptly notify his client of receipt of settlement funds of \$9,000 on August 12, 2014.

Count 3 – Respondent willfully violated section 6106 by endorsing a settlement check without the client's authorization or knowledge.

Count 4 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct (failure to maintain client funds in trust account) by failing to maintain a balance of \$6,000 in a client trust account on behalf of his client. Of the \$9,000 settlement funds, the client and/or his medical care provider was entitled to at least \$6,000.

Count 5 – Respondent willfully violated section 6106 by misappropriating \$6,000 between October 7, 2014, and November 3, 2014, which the client and/or his medical care provider was entitled to receive.

Count 6 – Respondent willfully violated section 6106 by misrepresenting to the client that he had not received the settlement funds, that the funds were mailed to a wrong address, and that his secretary had misappropriated the funds.

Count 7 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (failure to render accounts of client funds) by failing to provide an accounting regarding the \$9,000 settlement funds.

2. Case No. 14-O-06116 (Moody Matter)

Count 8 – Respondent willfully violated rule 4-100(B)(1) of the Rules of Professional Conduct by failing to promptly notify his client, Frank Moody III, of receipt of settlement funds of \$7,800 on September 19, 2014.

Count 9 – Respondent willfully violated section 6106 by endorsing a settlement check without the client's authorization or knowledge.

Count 10 – Respondent willfully violated rule 4-100(A) of the Rules of Professional Conduct by failing to maintain a balance of \$5,200 in a client trust account on behalf of his client. Of the \$7,800 settlement funds, the client and/or his medical care provider was entitled to \$5,200.

Count 11 – Respondent willfully violated section 6106 by misrepresenting to the client that he had not received the settlement funds and that his secretary had misappropriated the funds.

Count 12 – Respondent willfully violated section 6106 by misappropriating \$5,200 between January 16, 2015, and January 26, 2015, which the client and/or his medical care provider was entitled to receive.

Count 13 – Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to provide an accounting regarding the \$7,800 settlement funds.

Disbarment Is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied and respondent's disbarment is recommended. In particular:

- (1) The NDC was properly served on respondent under rule 5.25.
- (2) Respondent had actual notice of this proceeding and had adequate notice of the trial date prior to the entry of his default.
- (3) The default was properly entered under rule 5.81.
- (4) The factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.
- (5) Despite adequate notice and opportunity, respondent failed to appear for the trial of this disciplinary proceeding.

As set forth in the Rules of Procedure of the State Bar, the court recommends his
disbarment.

RECOMMENDATIONS

Disbarment

The court recommends that respondent Walter Lee Davis, State Bar number 98513, be
disbarred from the practice of law in the State of California and that his name be stricken from
the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements
of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and
(c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court
order in this proceeding.


Costs

The court further recommends that costs be awarded to the State Bar in accordance with
Business and Professions Code section 6086.10, such costs being enforceable both as provided in
Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the
court orders that Walter Lee Davis, State Bar number 98513, be involuntarily enrolled as an
inactive member of the State Bar of California, effective three calendar days after the service of
this decision and order. (Rule 5.111(D).)

Dated: June 28, 2016


PAT McELROY
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, On June 28, 2016, I deposited a true copy of the following document(s):

DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

in a sealed envelope for collection and mailing on that date as follows:


- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

WALTER LEE DAVIS
2420 SAND CREEK ROAD
C-1 # 327
BRENTWOOD, CA 94513

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Sherrie B. McLetchie, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on June 28, 2016.


Laurretta Cramer
Case Administrator
State Bar Court